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To amend the Packers and Stockyards Act, 1921

Washington

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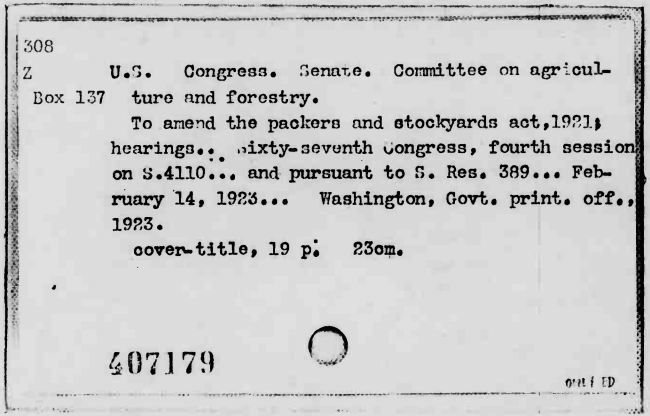

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# TO AMEND THE PACKERS AND STOCKYARDS ACT, 1921

Box

## HEARING

BEFORE THE

## COMMITTEE ON AGRICULTURE AND FORESTRY
## UNITED STATES SENATE

SIXTY-SEVENTH CONGRESS

FOURTH SESSION

ON

## S. 4110

A BILL TO AMEND THE ACT OF AUGUST 15, 1921, ENTITLED "AN ACT TO REGULATE INTERSTATE AND FOREIGN COMMERCE IN LIVE STOCK, LIVE-STOCK PRODUCTS, DAIRY PRODUCTS, POULTRY, POULTRY PRODUCTS, AND EGGS, AND FOR OTHER PURPOSES,"

AND PURSUANT TO

## S. Res. 389

DIRECTING THE FEDERAL TRADE COMMISSION TO INVESTIGATE AND REPORT TO THE SENATE THE FACTS AS TO THE PROPOSED ORGANIZATION AND MERGER OF CORPORATIONS OF ARMOUR AND COMPANY

FEBRUARY 14, 1923

Printed for the use of the Committee on Agriculture and Forestry

WASHINGTON
GOVERNMENT PRINTING OFFICE
34848 1923

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# TO AMEND THE PACKERS AND STOCKYARDS ACT, 1921.

## WEDNESDAY, FEBRUARY 14, 1923.

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
*Washington, D. C.*

The committee met, pursuant to call, at 10.30 o'clock a. m., in room 224, Senate Office Building, Senator George W. Norris presiding.

Present: Senators Norris (chairman), Capper, Harreld, Smith, Ransdell, and Heflin.

The CHAIRMAN. The committee will come to order. I hand to the reporter a copy of the report of the subcommittee on these matters that we are going to take up, and will have it put in the record.

(The report referred to is here printed in full, as follows:)

TO AMEND THE PACKERS AND STOCKYARDS ACT, 1921.

The subcommittee of the Committee on Agriculture and Forestry, to whom was referred the Norris resolution (S. Res. 389) and the La Follette bill (S. 4110), reports the measures back to the committee with the recommendation that the entire committee give further consideration to the Norris resolution.

The subcommittee believes that the enactment of the La Follette bill, which proposes investing the Federal Trade Commission with authority concurrent with the powers of the Secretary of Agriculture to investigate the packers, would not be helpful at present because of the disturbing influence it might have in the administration of the stockyard packer control act, which was passed by the present Congress and procedure under which is not definitely established.

Therefore the subcommittee recommends that no further action be taken on the measure at this time.

Said resolution and bill are as follows:

[S. Res. 389, Sixty-seventh Congress, fourth session.]

"Whereas it is currently reported in the public press that Armour and Company, one of the five largest meat-packing corporations in the world, is forming a corporation under the laws of the State of Delaware with a capital stock of $160,000,000, with the announced purpose of taking over the interests of said corporation in Chicago, Illinois, and elsewhere; and

"Whereas it is common knowledge that negotiations have been pending for some time between said Armour and Company and Morris and Company, another one of the five largest meat-packing establishments in the world, with the avowed purpose of the merging of said meat-packing corporations under the name of Armour and Company; and

"Whereas it is currently reported in the public press that the total amount of stocks and bonds to be issued upon the combining of said corporations is very materially in excess of the amount of property involved; and

"Whereas the carrying out of such proposed merger of two of the largest packing establishments in the world is liable to be detrimental to the public interests and to unlawfully restrain trade (1) in that such merger will tend further to limit the number of large purchasers of live stock from farmers and producers, and (2) will very materially reduce competition in the production of meats and packing-house products and thereby tend to increase the cost of living to the consumers of the country: Therefore be it

"*Resolved*, That the Federal Trade Commission be, and it is hereby, directed to make a full and complete investigation of the organization of said proposed corporation under the laws of the State of Delaware and also of the proposed merger of the said two corporations, and report to the Senate whether the organization of said corporation and the combining of said corporations are in violation of law and to what extent, if any, the carrying out of such merger will tend to eliminate competition in the purchase of live stock and to increase the cost of living to the consumers.

"[S. 4110, Sixty-seventh Congress, fourth session.]

"A BILL To amend the act of August 15, 1921, entitled 'An act to regulate interstate and foreign commerce in live stock, live-stock products, dairy products, poultry products, and eggs, and for other purposes.'"

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the packers and stockyards act, 1921, approved August 15, 1921, and entitled 'An act to regulate interstate and foreign commerce in live stock, live-stock products, poultry, poultry products, and eggs, and for other purposes,' is hereby amended by repealing paragraph (b) of section 406 thereof and substituting in lieu of said paragraph the following:

"'(b) Nothing contained in this act shall affect the power or jurisdiction of the Federal Trade Commission nor deprive the said commission of any power or jurisdiction conferred upon it by the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, or by an act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, or by any other act.'"

The Norris resolution and the La Follette bill were considered jointly by the subcommittee, sitting in executive session January 8, 9, and 10. Hon. Henry C. Wallace, Secretary of Agriculture; Hon. Victor Murdock, chairman of the Federal Trade Commission; Mr. F. Edson White, president of Armour & Co.; and Mr. C. J. Faulkner, jr., were heard.

In considering the Norris resolution, Secretary Wallace stated that he had no knowledge of any relationship between the organization of Armour & Co. of Delaware and the proposed merger of the parent company, Armour & Co. of Illinois, with Morris & Co. Mr. White stated positively in answer to a direct question that there was no connection between the organization of the new company and the proposed merger. The subcommittee is not, however, convinced that the organization of Armour & Co. of Delaware would not facilitate the consummation of the merger at any time it was desired to carry out the plan. Entertaining this belief and because of the limited opportunity which the subcommittee had to hear witnesses, it recommends that further consideration be given the Norris resolution by the entire committee.

The La Follette bill would give to the Federal Trade Commission authority, concurrent with the authority of the Secretary of Agriculture to investigate the packing industry and the live-stock market agencies by restoring the powers of which it was deprived by the enactment of the stockyard packer control act. Secretary Wallace stated that he would not object to the restoration of the former powers of the Federal Trade Commission, but suggested that concurrent authority would not be in the interest of the public and expressed a desire to be relieved of the responsibility of investigation under the provision of the stockyard packer control act if jurisdiction over the packers were restored to the commission.

Mr. Murdock stated that the enactment of the stockyards packer control act had taken away the jurisdiction of the Federal Trade Commission over the person of the packers but not entirely over the subject matter, a situation which he said had left the commission without authority to investigate a complaint against any company in which a packer held a nominal interest. The subcommittee is of the opinion that there is a border line along which there is now an overlapping of authority on the one hand and a lack of authority on the other arising out of the transfer of the jurisdiction over the packers from the Federal Trade Commission to the Secretary of Agriculture by the enactment of stockyards packer control act.

However, this situation is not, in the opinion of the subcommittee, of sufficient importance to the public welfare to warrant interference with the machinery for the enforcement of the stockyards packer control act which is now in little more than the formative stage, and the disturbance of the public confidence in the administration of our live-stock markets which would be incident to the change contemplated by the La Follette bill. The subcommittee feels, therefore, that authority to conduct all necessary investigations of the packers and market agencies ought to remain vested in the Secretary of Agriculture and recommends that no action be taken on the La Follette bill at the present time.

For the further information of the committee there is submitted herewith the transcript of the testimony of the witnesses who appeared before the subcommittee.

JOHN B. KENDRICK,
PETER NORBECK,
HENRY W. KEYES,
*Subcommittee.*



The CHAIRMAN. We are called this morning in order to give some parties a hearing on the report of a subcommittee on my resolution, and also the report of the subcommittee on the bill introduced by Senator La Follette restoring the jurisdiction of the Federal Trade Commission over the packers.

Now, I understood that Mrs. Costigan was going to be here.

Mr. MARSH. She will not be here, Mr. Chairman, but I am going to ask permission to submit later an article she has written.

The CHAIRMAN. We have present representatives of the Grange and of the People's Reconstruction League.

Mr. SMITH. On what resolution?

The CHAIRMAN. On a bill introduced by Senator La Follette in effect referring the jurisdiction over the packers to the Federal Trade Commission, and a Senate resolution that I had introduced providing for an investigation of the proposed merger of Armour & Co. and Morris and their Delaware Financing Corporation, the subcommittee has reported.

Senator HARRELD. Now, Mr. Chairman, this resolution of yours is similar to the La Follette resolution, that is, giving to the Interstate Commerce Commission jurisdiction——

The CHAIRMAN. No; the Federal Trade Commission.

Senator HARRELD. The Federal Trade Commission. You simply ask that the Federal Trade Commission make a report of this particular instance?

The CHAIRMAN. It gives general jurisdiction which they had before we passed the packer-control bill, by which we took that jurisdiction away from the Federal Trade Commission and gave it to the Secretary of Agriculture.

## STATEMENT OF DR. T. E. ATKESON, REPRESENTING THE NATIONAL GRANGE.

Doctor ATKESON. Mr. Chairman and gentlemen of the committee, all of the members of the committee know that I am representing the National Grange, a farmers' organization that is interested in every phase of legislation that affects agriculture, either favorably or unfavorably.

When the so-called packer bill was enacted, I had a feeling, and I think it was the general feeling among the farmer people, that we had likely heard the last of that question for at least a considerable time. I am sure that I hoped that I had heard the last of it and that it would not be referred to us for further consideration until the law, as it was enacted, had had a full opportunity to prove or disprove its usefulness or its value to the live-stock industry and to the general public welfare.

While I was out at Wichita, Kans., last November, attending the sessions of the National Grange, the newspapers carried the story that one of the great packing companies was about to form a combination for the acquirement of the properties and liabilities, too, for that matter, perhaps, of another one of the great packing companies.

The morning that the newspapers carried that story the representative of the Associated Press came to my room in the hotel and wanted to know what was going to be the attitude of our organization toward that proposed combination, and I answered without having conferred with anybody, that I thought that as a matter of principle, our people, at least, would be opposed to the combination, or to the acquisition of this packing company and its assets by another packing company.

Afterwards about the hotel, and during the sessions of the grange—there were several thousand people there, and, of course, I did not see all of them—but so far as I could learn and certainly so far as I heard, there was a unanimous expression of opinion that that combination should not take place.

I have read the report of the subcommittee, which has made its report to the committee, and also the statements of Secretary Wallace and of Mr. Murdock and some other statements that have been made with reference to the joint resolution offered by Senator Norris and the amendment to the packer bill offered by Senator La Follette, and I have been compelled to reach the conclusion that the policy of combining these two great packing plants is opposed to sound public policy.

It has been said to me within the last 48 hours that it might be a good thing if all the packers were under one management, that it would increase efficiency, dispense with overhead charges, and costs, and I am perfectly willing to agree that that may be so. Large undertakings require large capitalization and unified management in order to keep down the costs of operation, what is generally known as overhead costs. Carrying that to its logical conclusion would unify all our undertakings in this country. I am perfectly satisfied that it would save enormously in the overhead costs, if in the city of Washington, if it had the authority, and it probably would have, would grant a monopoly to a single retail grocery company that

supplies the people of this city with food. I am satisfied they could reduce the overhead costs one-half or three-fourths if that were done. Are we ready for that sort of thing, indeed, in this country?

There is a tendency, I concede, in that direction. Now, then, it is my contention that if we consent—I mean the public now, or the entire citizenship—to the elimination of costs of overhead charges, duplication of expenses, in many of our commercial activities, that in consideration for this concession, for what we may call more efficient and economical management, we are going to insist upon more rigid supervision than ever before. One is the natural sequence of the other. If we are going to grant monopolistic rights and privileges in order to reduce costs of operation, for increased efficiency, then we are going to insist more and more on somebody supervising the operation.

Now, our organization has been, so far as those monopolies are concerned, ever since the beginning which is more than a half a century—it wrestled with the railroad problem 45 years ago, made some strenuous fights—our organization carried to the courts of Iowa and Illinois and to the Supreme Court of the United States and secured a decision which has been the basis of nearly all antimonopoly legislation ever since, by Nation and State—it established the principle that the creature could not be greater than the creator.

All combinations, either monopolistic or not, in their character, are the creatures of the Government, either State or National, and can not become greater than their creator. The right of governmental control over all trusts and combinations is fundamental and the grange demands that such organizations shall be subordinate to the interests of the public and operate without extortion and discrimination.

I may say in connection with that that we have always opposed the Government going into business.

I expect some of the Senators will not agree to the same extent that I do with the purposes of our organization, but if the Government is to stay out of business, as a business factor in commerdial affairs of the country, it must somehow protect the interests of all of the people against the exploitation by a part of the people, or of an individual or a group of individuals; that is, that the rights and interests of all of the people will always be superior to the rights and interests of any individual or any group of individuals, seems to us to be sound policy.

Now, if we are to consent to this concentration of wealth in the hands of great commercial enterprise, in the interest of efficiency—I am not sure but that is where we are going to get off; at any rate, that is the way we are tending—it certainly means one of two things, to my mind. That is, either that the Government must get into this business in the interests of the people or the Government must supervise in a very decided measure the activities of these large capitalized interests in order that the public may not generally be subject to exploitation.

I have never been disposed to criticize men engaged in large enterprises. It used to be the stock in trade of some people in this country, when they wanted to go into a war dance against all monopolies to jump up and down on John D. Rockefeller. I expect Rockefeller is a better man than I am—I mean morally and physically, too, so far as I know. He is a little older. But I do not believe the interests of the people would be safe in my hands, and I believe I am as honest as the average citizen; that is, human nature is so constituted that if it gets a chance to exploit other people, it is going to exploit. That is all there is to it. If anybody don't want me to exploit them, they had better not put themselves subject to my exploitation. I mean, in a general way. I do not mean that I want to rob people, but it is like the story of the old merchant that was advising his son that honesty was the best policy. He wound up by saying, "If there is going to be any cheating, it is better to cheat a little than it is to be cheated." That seems to be inherent in human nature, and so, if you give them the opportunity—well, the average man will be guilty. At least the burden of proof is on him to establish the fact that he is not guilty. Now, then, with my convictions as to the selfishness of humanity, if we are going to grant large monopolistic control of business in this country, in consideration for granting that special privilege, if you want to call it that, we are going to insist on more and more rigorous control.

Now, we stated this at our last meeting, with regard to the Federal Trade Commission. The resolution of the National Grange was as follows: "The National Grange stands squarely and fully for the Federal Trade Commission and against all efforts to restrict or destroy it." Now, the packer bill, as it was passed, undoubtedly undertook to restrict the Federal Trade Commission, and possibly succeeded to a greater or less extent.

I have no disposition to interfere with the rights or prerogatives or efficiency of administration of the Secretary of Agriculture, but I have been unable to see that any great harm could come if the packer act were amended as proposed in the La Follette amendment. If there is no occasion for investigation of the packers by the Federal Trade Commission, then they will not be investigated. And, in the interests of honest men and honest business, and honest administration, I do not believe that people responsible for honest business and honest administration, if granted a large monopolistic interest in the country will ever object to placing their books or their business subject to a judicial investigation.



At any rate, if the Federal Trade Commission should have been created, and if it has any business to continue to draw the breath of life, as a governmental activity, it should have reasonable consideration and be granted an opportunity to function, as was intended by the power creating the Federal Trade Commission, or that act ought to be amended and the Federal Trade Commission ought to be abolished.

There are some people, I have no doubt, that would be perfectly willing to abolish it. It is not necessary for me to argue whether it should or should not be abolished, but if it is to function effectively, or be worth anything, or the men who serve on that commission are in any way to render service for their salaries, the Federal Trade Commission must be given an opportunity to function.

The formal resolution adopted by the National Grange will show its position on the subject of control of corporations and monoplies. I quote from the "Legislative recommendations of the National Grange," as follows:

"The right of Government control of all trusts and corporations is fundamental, and the grange demands that such organizations shall be subordinated to the interest of the public and operated without extortion or discrimination."

I think I may conclude all I have to say by saying that in view of our study of the situation, without wishing to say ugly things about the packers—I have never said anything ugly about them particularly; they are just human beings, I mean the people who are in control of them—I think I may conclude by saying that one of the new problems that confronts us connected with the consolidation of these two great packing plants is that if that is to take place, unquestionably the logical sequence of that would be to consolidate all of them and save more overhead costs.

It is a good deal like the Irishman who was accosted by a stove agent, who undertook to sell him a stove on the theory that it would save half the fuel. Pat was shrewd enough to say that be-jabbers he would just buy two stoves and save all of the fuel. Why not consolidate all of these packers' plants into one plant and then let somebody supervise them with a view that if this great saving is to result, the public, who are conceding this privilege, shall at least share in the saving? There are no guaranties that if it is left to the voluntary action of the individuals the public will share in the benefits that result from the efficiency and the reduction of the overhead costs.

I am not at all sure that, knowing what we know, it would not be sound economy to consolidate the five great packing plants. I think they have a gentlemen's understanding anyway that amounts to about the same thing, and, if you permit them to consolidate, then it follows that the public at least would be benefited in a large measure by the consolidation, that as a means of compensation for granting this privilege the public must have part of the advantages that may result from this monopolistic privilege.

But, confronted with conditions as they are, I will say that it is my conviction that the people that I represent are in favor of the Norris resolution and of the proposed amendment to the packer act.

I do not think it worth while for anybody to ask me any questions or for me to answer any.

## STATEMENT OF MR. BENJAMIN C. MARSH, REPRESENTING THE PEOPLE'S RECONSTRUCTION LEAGUE.

Mr. MARSH. Mr. Chairman and gentlemen, members of the committee, for the record I would state that my name is Benjamin C. Marsh, and I appear on behalf of the People's Reconstruction League in favor of the Norris resolution for investigation of the proposed Armour-Morris packing plants, and also of the holding company in Delaware, and also in favor of Senator La Follette's bill to restore the functions of the Federal Trade Commission to investigate the packers.

I want, very briefly, to summarize some of the conditions in the meat-packing industry, and I am glad that Doctor Atkeson has pointed out what is clear, if we may deduce from the past experience with the packers, what is in their minds in asking for this merger of Armour and Morris, because you will recollect that in the hearings before the subcommittee the question was asked as to the relation between the holding company and the merger, and Secretary Wallace stated, referring to the holding company, that "they may have in their minds later the purchase of Morris & Co., or

Sinclair & Co., or anybody else, or doing anything else that they think would effect economies in the operation of their business, but there is no necessary connection, so far as I can see."

Well, I would like to point out now, Mr. Chairman, that the history of the packers shows that they have been very strong on combination and collusion and that the advantage of any economies which they may effect has gone to enormous profits to the packers, the meat packers, and not to any advantage to the consuming public. So that we might just as well admit that what we view in this proposed merger is an effort first to get two companies—two of the big meat packers—together, and then five later on, one big monopoly merger.

It was pointed out in the brief submitted by Armour & Co., and published in the report entitled "Merger of Meat-Packing Companies," submitted by the Secretary of Agriculture on December 12, in response to a resolution of the Senate, that the two companies sought to combine in this merger do not to-day have a majority or over 50 per cent of the total slaughter of animals shipped in interstate commerce, but according to this report, on page 7, if the five big packers combine they will slaughter 59.3 per cent of the total number of cattle, calves, sheep, goats, and hogs slaughtered under the Federal inspection.

Back in 1919 their percentage, according to these figures submitted by the Secretary of Agriculture, was 69.3 per cent. If you take the percentage of Armour & Co. and Swift, and Morris & Co., it does not make such a big showing, but it is quite evident that when they get started in combination they will want to go right through with it.

Now, as I understand the situation, the effort to accomplish this merger is that the independent packers are beginning to gain quite a little bit on the Big Five. I would like to quote the figures submitted by the Secretary of Agriculture to prove that that is the case. There are not very many, but they just indicate what is happening.

The independent meat-packing establishments are growing, as is shown by the figures I have just given, whereas the Big Five, in 1919, slaughtered 69.3 per cent of all of the cattle, calves, sheep, goats, and hogs slaughtered under Federal inspection, that had fallen about 10 per cent of the total, down to 59.3 per cent four years later, in 1922.

This report further states that Armour & Co. lost in the year 1921 $31,709,817; Morris's losses were $11,447,540.

I asked Mr. Morrill, who is in charge in the Department of Agriculture of the administration of the packer and stockyards control act, as to whether they had any figures on the packers' profits for 1922, and he said, very frankly, that they had tentative figures, that he could not give any report. I asked him, if this committee requested that they give any figures, whether they would do so, and he said they would take that up with the committee. I assume that the committee has a right to get all of the figures, brought up to date, as to the relative financial status of Armour & Co. and Morris & Co.

Doctor Atkeson has well stated that we may be tending toward consolidation of big business, and that that may be the solution to get efficiency and economies and the advantages thereof down through to the people; but the facts are that we have not done it up to date, and that the Big Five packers have continuously and persistently tried to put independent packing concerns out of existence.

In part 32 of the hearings before the House Committee on Agriculture on the meat-packer legislation, on Saturday, April 3, 1920, page 2397, the following statement was submitted by William B. Colver, a member of the Federal Trade Commission, as requested by the committee, showing that about 185 slaughterers and meat packers have been eliminated from the general field of competition against the big packers, (1) through purchase by one or more of the big packers, (2) by being forced out of business by their unfair methods, or (3) for reasons unknown have ceased interstate business. Now, I do not ask to have this long list of casualties put into the record. It takes five or six pages, and Mr. Colver says, "This list, while it includes both interstate and intrastate concerns, does not purport to be a complete list, but only those which have been brought to the attention of the commission. The list is far from complete and covers partially only meat packers and slaughterers. It does cover, however, some cases prior to 1910. Instances for which the date was not definitely learned are chiefly prior to 1910."

But, looking over the dates roughly, I would say most of them were eliminated between 1910 and 1919.

The CHAIRMAN. One hundred and eighty-five?

Mr. MARSH. I counted them hurriedly; 186. Yes; in round figures, 185.

The CHAIRMAN. What was the cause of the others? He only gives the reasons for four or five going out of business.

Mr. MARSH. No; he gives the three large classes of reasons why these independent concerns have been put out.



The CHAIRMAN. No; I understood the number of concerns that had been put out of business——

Mr. MARSH. That includes three heads, first, through purchase by one or more of the big packers; second, by being forced out of business by their unfair methods; or, third, for reasons unknown have ceased interstate business.

It is clear that if the proportion of the total slaughter of cattle, sheep, live stock, and hogs, and goats included, although that would be a small factor, by the Big Five is reduced, in the same ratio the slaughter by the independents has increased, and it would seem to me that the purpose of this merger is to start a combination of the Big Five. I want to put into this record here, because we think it is a matter of vital importance, some of the things which the Federal Trade Commission found as to the packers.

First, their use of joint legislative funds—and I shan't burden the record very much, but it is hard to go hurriedly through all of these volumes, and I have just marked a few pages here:

"Further evidence of the existence of a conspiracy among the five big packers was found in the vault of Henry Veeder, in the form of documents relating to funds maintained by the big packers," that is, the Big Five "and oleomargarine manufacturers." These joint funds, as will be shown in one of the sections of the report were used to employ legislative lobbyists and pay their unaudited expenses: to influence legislative bodies; to elect candidates who would wink at violations of law and defeat those pledged to fair enforcement; to control tax officials and thereby evade just taxation; to secure modifications of governmental rules and regulations by devious and improper methods; to buy public opinion by the control of editorial policy, through advertising, loans, and subsidies, and by the publication and distribution at large expense of false and misleading statements."

Now, they, the Big Five, all combined. That is shown right on this very page, and contribute to these funds.

Now, Mr. Chairman, this move for a merger is so clear that we understand just what the game is. These companies have gone to the President, the representatives of Armour and Morris have been to the President, as stated by Secretary Wallace before your subcommittee. They have been to the Attorney General. They have been to the Secretary of Agriculture, to try to get permission to go ahead and merge.

The opinion of the Attorney General, if I understand it clearly, as quoted by the Secretary of Agriculture, is that under the terms of the packer and stockyards control act, the Department of Agriculture, in charge of the administering of that act, has no authority to say yes or no on this merger, but it seems to us that the producers of live stock, sheep, hogs, and so forth, and the consumers thereof have a greater interest than any merely legal restriction of power conferred upon the Secretary of Agriculture, and that is to find out what is really back of this merger.

I want to call to the attention of the members of this committee, that just when we were working hard to get through the packer control legislation some two or three years ago, during that time, in order to prevent there being incorporated in any real packer-control act, a provision that the packers must refrain from going into any unrelated lines of business, or empowering any department of the Government, given power to control the packers, to compel them to go out of unrelated lines of industry.

These Big Five packers went to the Attorney General of the United States, Mr. A. Mitchell Palmer, and secured his collusive agreement to the entering of a court decree keeping them out of unrelated lines of business. That was for the purpose of keeping from being incorporated definitely in the legislation sought to control the meat packers, a provision authorizing the Government or a supervisory authority to exercise that power.

After the stockyards and packer control bill was passed, the packers directly or through their agents, sought to secure a modification or termination of this restraint decree, so that they could slip right back into these unrelated businesses.

A leopard does not change his spots. Of course, our heart goes out to these packers, if they are really as poor as they say they are, but, at the same time, our sympathy for them is tempered by our knowledge that a very large proportion of the capitalization of all of these meat packers, with the possible exception of Morris & Co., is made up not out of money borrowed, but out of surplus earnings which they put back into their companies, and, of course, particularly Armour & Co., is largely held by a few people.

I want to go back and read a few more statements from the Federal Trade Commission's report, and they will not be lengthy:

"The power of the Big Five in the United States has been and is being unfairly and illegally used to manipulate live-stock markets; restrict interstate and international supplies of foods; control the prices of dressed meats and other foods; defraud

both the producers of food and consumers; crush effective competition; secure special privileges from railroads, stock-yard companies, and municipalities: and profiteer."

I will make the charge that the packers are hoping on the 5th of March, after this Congress has come to its unlamented death, to put through this merger, unless the legislation instructing the Federal Trade Commission to investigate this merger goes through, and as I understand the law—and I want to be corrected if I am in error—even were the La Follette bill, restoring the Federal Trade Commission, to be passed by the present Congress—and I sincerely hope it will be—the Federal Trade Commission would not have power of its own initiative, and without specific complaint, to make such an investigation of the proposed merger as is provided for by the resolution of Chairman Norris. I think that is correct. Under the law, in other words, you are restoring the power to investigate, but it is going to take action by Congress or by the President to instruct the Federal Trade Commission to make this investigation of the proposed merger, and I want to register here our regret that Secretary of Agriculture Wallace does not invite such cooperation in the investigation of this proposed merger by the Federal Trade Commission. In order to make the record clear—and there are here in this room three of us who were present at the time—we went to see Secretary Wallace, when the resolution of the chairman for the investigation of this Armour-Morris merger was introduced, and we definitely asked Secretary Wallace whether he would request the Federal Trade Commission to investigate this merger, and Mr Wallace—I want to be corrected if I am in any way misstating his position—stated quite clearly that he would not invite the Federal Trade Commission to investigate this merger, and Mr. Wallace knew that under the law the stockyards and packer-control act as construed—I do not believe it is correctly construed—but as construed he is the only one who, on his own initiative, could instruct or request the Federal Trade Commission to investigate the merger.

It is perfectly clear that the packers have not suffered in the slightest degree under the control that they have had from the Secretary of Agriculture. Just let me quote you this beautiful little tribute to the Secretary of Agriculture indulged in by Mr. F. Edson White, president of Armour & Co.

Senator Keyes asked as to the relations between the packers and the Department of Agriculture, and I quote this from Mr. White, president of Armour & Co.:

"Well, answering for Armour & Co., and I believe that the Secretary of Agriculture will confirm my statement, there has been the closest cooperation since that jurisdiction was given to the Department of Agriculture. Constantly there is inquiry about business through agencies established by the stockyards and packer administration, and a day hardly goes by that we are not in contact with the department on some question or other, connected with proposed business policies. We have found the finest spirit in the Secretary's office towards reaching a better understanding between the Government, the people, and the packing industry."

You know sometimes it is all right for the lion and the lamb to lie down together, but you always want to know which is on the inside and which is on the outside. And, the prices which consumers have paid for meat products and the prices which the farmers have received for live stock, hogs, and sheep, do not indicate that this fine spirit in the Secretary's office has conduced towards the purpose for which the Stock Yards and Packer Control Act was passed.

Then, let us go a little further. Senator Kendrick asked:

"Well, from your answer"—and this is immediately following my previous quotation—"I should judge your company has extended to the department every facility at its command, and by that I mean you have not hesitated, I assume, in submitting books, records, and everything of that sort that the department might feel that they may need, or other information.

"Yes, sir; I can say we have always endeavored to meet them."

Mr. Chairman, of course, the poets have noted that it is not what a man does but what he would do that enobles him. But it seems to me that when we come to deal with this conscienceless monopoly, especially when they are coming here asking that the merger become immediately effective, we have a right to look into it.

The Secretary of Agriculture, I am informed, has not compelled the packers to establish a uniform system of accounting, and no one in the United States of America knows better than the chairman of this committee, who conducted the hearings which made possible the minimum of packers' control legislation which we secured—no one knows better than you how the Big Five manipulate those books, so that few people in the country can tell what their profits are, and in his address and talk here before your subcommittee, the Secretary of Agriculture seemed to be attempting to explain and he spoke of the difficulty of getting a corps of auditors who could really find out what the packers are doing, and he says, "I have built up just as rapidly as I can a corps of auditors and accountants, getting them into the bookkeeping phases," but that has been a slow process. But they have not done it anyhow.



I would like to have this committee ascertain from the Secretary of Agriculture whether or not Armour & Co. and the rest of them have let him have access to their books, and whether he has installed a uniform system of accounting. I think he has not.

Now, as to the methods of these packers who are hitting the sawdust trail toward reform. On page 68 of this summary and Part I of the Federal Trade Commission's Report on the Meat-Packing Industry with regards to methods and results of this combination, the statement appears: "The purpose of this combination, which for more than a generation has defied the law and escaped adequate punishments, are sufficiently clear from the history of the conspiracy and from the numerous documents already presented, namely:

"To monopolize and divide among the several interests the distribution of the food supply not only of the United States, but of all countries which produce a food surplus, and, as a result of this monopolistic position,

"To extort excessive profits from the people not only of the United States but of a large part of the world."

The CHAIRMAN. That is the Federal Trade Commission?

Mr. MARSH. That is the Federal Trade Commission, summary and report, Part I, page 68.

I am going to try to establish what to my mind is clear from the admission of Armour & Co. themselves, that they are not denying that they are going to try to restrain trade, but they are going to try to keep within the law in so doing. I would like to read an excerpt from the brief submitted by Armour & Co., page 47 of this "Merger of Meat-Packing Companies."

The CHAIRMAN. That is the report of the Secretary of Agriculture?

Mr. MARSH. In the report submitted by the Secretary of Agriculture, in response to the La Follette resolution, instructing the Secretary of Agriculture or directing him to report all information in his possession relative to that proposed merger or mergers, etc.:

"The Sherman Act: 1. Every restraint of trade is not unlawful."

Well, now, of course, no packer is going to claim that his restraint of trade is unlawful restraint. He would not come and ask for a merger and say, "We admit that we have been breaking that law, that permanent injunction of the Supreme Court of the United States, of 1903." He would not admit it. They attempt to prove that they are not going to restrain trade unlawfully or unduly.

The brief says that "It has been definitely decided by the Supreme Court that the Sherman Act does not condemn as unlawful every contract or combination in restraint of trade, but only such as, in the light of reason, unduly or unreasonably restrain interstate or foreign commerce."

This is a plea in avoidance. As I understand it, they mean here "We have got some laws, but we do not regard ourselves as confined by those laws, and we are not going to encroach upon those laws, but we intend to restrain trade." That is the reason that this combination is giving, as I can point out from their further statements.

We know that they could do, undoubtedly, a number of things. You remember the "rule of reason" issue when it was brought before the Supreme Court of the United States. In the decision where that expression was used it was made clear that the corporations never regarded any restraint of trade as unreasonable or undue when practiced by themselves. If they could get the business it was all right. Now, they are simply trying to make clear that they are trying to keep within the law but to restrain trade all they can and get back some of the slaughter which these independent meat-packing establishments have been taking away from the Big Five.

"II. Size alone is not sufficient to show a violation of the Sherman Act."

That is perfectly true. Size alone is not enough to show a violation of the antitrust laws.

The CHAIRMAN. But, it does seem to me right there, Mr. Marsh, that size alone is a very important factor tending to show monopoly. A man keeps out of business if he knows that there is a great monopoly in that business, because he realizes he will live at their mercy if he lives at all. Now, right in that connection, I want to call your attention also to the fact that I think it is shown that while the packers lost money in 1920 or 1921—which was it?

Mr. MARSH. 1921.

The CHAIRMAN. In 1921 the independent packers made money. I think that demonstrates that the very size of these packers itself has a tendency, and in that case brought about or was the reason for the loss instead of a gain. The independent packers selling for a little bit less than the big packers, because they have to in order to live, and paying perhaps a little bit more for the limited amount they buy of products, yet made money, showing, it seems to me, that the immense overhead expense and the methods of their carrying on their business by trying to control legislation

and executives, and everything else, was so expensive that it brought about a loss in 1921, while the men or corporations that did not find it necessary to resort to all of those outside expenses were making a profit.

Mr. MARSH. And, as I pointed out, Mr. Chairman, as to the relative efficiency of the small and large meat packers——

The CHAIRMAN. That shows that their very size——

Mr. MARSH (interposing). That is pointed out by the Federal Trade Commission.

The CHAIRMAN (continuing). When they get to that point where they try to control the world and look after everybody, legislatures and Congress and even the courts and everything else, it costs a whole lot of money. The independent packer who does not try to control the world does not have to carry that big expense, and it seems to me that the very size itself, when they follow human nature, as suggested by Doctor Atkeson, when they get the power and try to get more and more, by all kinds of schemes, both fair and unfair, and to get it all costs money and interferes with their efficiency.

Mr. MARSH. I am very glad that you stressed that. I didn't want to leave any impression that I agreed with the statement that because they had large size they would not form a monopoly. Why, in their own admission, in their opening statement, Armour & Co. say that they "operate 16 packing plants, located in various States of the United States, the principal ones being in the Middle Western States, and also operate 332 branch houses for the distribution of their products, which are located in all of the principal cities of the United States."

In the meanwhile, it is perfectly true that there is nothing wrong with their statement in their brief that size alone is of itself not sufficient to show a violation of the Sherman Act. There are other things I want to show besides the violation of the Sherman Act that are involved in this meat-packing business. There is the question of protecting the producers of live stock and the consumers of meat products.

I quite agree with you that the tendency of a corporation to violate the Sherman Act is pretty nearly in direct ratio to its size, but to my mind, one of the great propositions about this whole packing industry is that it is so tremendously uneconomic to have scores of millions of hogs, cattle, calves, sheep, and goats slaughtered in 12 large cities, as is done to-day, under this uneconomic system, which this combination or collusion, or illegal combination of the five big packers brought about, by which it is necessary for them to bring live stock several hundred, a thousand miles, or even 1,500 miles, in a few extreme cases, to be slaughtered, and then shipped back in the form of meat products to the very localities from which the raw material came. But, if we had a sufficient number of independent concerns, scattered throughout the country, the slaughtering could be done where the live stock is raised.

The CHAIRMAN. I think that is one of the reasons why the big packing establishments are not as efficient as they should be, the very fact of the freight rates both ways. There should be, instead of a few packing establishments, there should be slaughter houses, and ought to be hundreds of them scattered all over the country. There ought to be one in every locality where there is enough stock sold to keep a packing establishment going all the time and where it would be able to utilize all of the by-products. It developed here on our investigations that it is more economical to ship dressed meats in refrigerator cars than it is to ship live stock in freight cars, and when you ship them over long distances you not only pay a large freight rate, one way, but you injure the stock to some extent, and have losses in that respect that do not exist with the finished product, and at the same time you increase the necessity of shipping the stock one way and the finished product back the other way.

Mr. MARSH. That is, indeed, the way that this combination has been developed, the meat packers' combination.

The CHAIRMAN. If the consumers and the producers were all in one locality, then you might, I think, make consistently the argument that it would be economical to put them all in one establishment, but when the consumers and the producers both are scattered all over the immense territory that they are scattered over, and you combine the packing and then distribution from one or two or a dozen central localities, you have brought about a condition that would not exist if you had more of them, and then you would have less freight.

Mr. MARSH. I would like to follow up just a little bit more this brief of the packers. I am not a lawyer at all, and it is embarrassing to me, working on a salary of perhaps one-fifth to one-tenth of what some of these packer lawyers get, to attempt to criticize them, but nevertheless, I am going to take my courage in hand and continue.

"III. In all cases where the consolidations of industrial corporations have been held to violate the Sherman Act, they have controlled 50 per cent or more of the business of their respective industries and oppression of others has appeared."

The CHAIRMAN. What is that from?



Mr. MARSH. I am quoting from the brief of Armour & Co. in this same report. It is on page 50.

Now, every argument which holds, which is advanced for the Armour and Morris merger for the consolidation of Armour and Morris, holds for the consolidation of Armour, Morris, Wilson, Cudahy, and Swift.

The five now have, or last year had, nearly 60 per cent of the total slaughter of animals, slaughtered in interstate commerce, and subject to Federal inspection, according to the figures which I quoted to you from the Secretary of Agriculture, and they are advocating getting just as close to a monopoly as they can get by with in the year of our Lord 1923, and before the new Congress comes in. It is just as inappropriate, Mr. Chairman, for this merger to be permitted before the new Congress comes in, which is proposed under this merger, just as inappropriate to have that done as it is to have the Senators who got roundly defeated, and the Congressmen, in 1922, November 7, vote in the present Congress. And the propriety of my suggestion is confirmed, I think, by the action of the Senate yesterday in adopting your resolution, which would preclude such a perversion of representative government as we are suffering from in the continuance of the present Congress.

The packers ought to see the handwriting on the wall in the action of the Senate yesterday. Here is a policy involved, and they are trying to get by with this first step in the combination of the Big Five before the new Congress comes in. Then, they say, quoting still further from this brief, on page 56:

"IV. The proposed acquisition does not involve deception, bad faith, fraud, or oppression."

You will see if you go back here that they contradict themselves.

"The proposed acquisition is being brought about entirely voluntarily by the parties for the purpose of effecting economies and there is no deception, bad faith, fraud, or oppression involved whatsoever. Therefore the acquisition can not be considered an unfair method of competition within the definition thereof announced in the Gratz case * * *."

I do not know what that was, but it was something to uphold this proposed improper action of the packers.

"* * * unless it can be said that it is against public policy because of its dangerous tendency unduly to hinder competition or create monopoly."

Well, that is just the point, Mr. Chairman. This combination, formerly just a collusion, not sanctioned by law, is nowsought to be sanctioned by law. As I think is proven by this list of 185 competitors put out of business, there will be still more meat-packing concerns put out of existence. This present condition is undoubtedly tending toward healthy competition, and what the Big Five want a monopoly granted for is to get their present 59.3 per cent total slaughter up to where it was four years ago, nearly 70 per cent, or even possibly to 80 per cent.

It further states that the proposed acquisition of Morris by Armour would not operate unduly to restrain trade or create a monopoly, I assume because the volume would only be something around 23 per cent.

"Following the matter out logically, it would have to be concluded that the Clayton Act declared it against public policy for everyone, whether person, copartnership, or corporation, to acquire control over the property or business of any other person, copartnership, or corporation in any way whatsoever, where the effect would be to substantially lessen competition between the two or restrain commerce in any section or community or tend to create a monopoly in any line of commerce."

All right. Now, here is where they differ from what they say on the preceding page. They say on the preceding page, in effect, that they want a combination to produce efficiencies and economies through increasing their size, and here on page 57 they say that it will be improper if it "substantially lessens competition between the two or restrains commerce."

Well, there is one contention that I admit. They say they are going to effect it immediately and that they are going to do it through combination. They say if they do combine, then, under section 7 of the Clayton Act, it will be improper, so they are pleading guilty themselves of what they are up to.

Now, the striking thing is that Armour—and, I am quoting only Armour's brief—is so thoroughly afraid of the Federal Trade Commission that they don't want the Federal Trade Commission in here or to have anything to do with them. They say that "the jurisdiction of the Federal Trade Commission to prevent unfair methods of competition so far as a packer is concerned has been transferred to the Secretary of Agriculture by the packers and stock yards act of 1921." Sure, that is what the packers got through in that bill, which I denounced before the House Committee on Agriculture as a fake and a fraud, and experience has shown it.

Now, they do not deny that they seek to engage in unfair methods of competition, but they simply say that the jurisdiction of the Federal Trade Commission to prevent

any unfair methods of competition, so far as the packers are concerned, has been transferred to the Secretary of Agriculture, and they feel perfectly safe with that dear Secretary of Agriculture. They have gone right ahead. They have sat down across the table—I do not know whether tears flowed from the Secretary's eyes as they reported how they had lost money, or what happened, but the Secretary of Agriculture has not brought them to time.

The mere fact that the packers express this fear of the Federal Trade Commission bringing out the facts is an adequate reason why the Secretary of Agriculture—and I do not mean to criticzie him personally; he admits he hasn't accomplished it—should want the Trade Commission to bring out the facts. He admits, or did last month, that he hasn't got this corps of auditors to find out about this situation, and all I have got to say, frankly, on behalf of the organization I represent, is that unless Secretary Wallace accedes to this request he will stand convicted by his own record of envying the Federal Trade Commission's jurisdiction, or a desire, possibly, or probably a modification, to protect the packers, and he is not put there to protect the packers. The jurisdiction is not given him to protect the packers, but to protect the live-stock growers, who are in the most desperate financial straits in their history, and to protect the American people.

I hope, Mr. Chairman, that in this brief statement, I have been able to bring out some facts which make us back this resolution of yours and make us oppose the merger.

With regard to the holding company, I will only take a minute. I do not know the meaning of that, but you know you get a little suspicious of these innocent monopolies, of these corporations. As I said some time ago they have made a statement that does not gee very well, Armour & Co., that they have a capital, authorized capital stock of $400,000,000, of which, from this same report, $100,000,000 is represented by preferred stock, and $300,000,000 by common stock. Of the total authorized capital stock there is now issued and outstanding $50,673,000—I am using round figures—of preferred stock, and $50,000,000 each of Class A and Class B common stock, or a total of $150,673,400 of both common and preferred stock.

And, under this reorganization and financial holding corporation, which makes me think of the packer combination organized up in Maine, they propose to issue, according to their own statement, $170,000,000 worth of stock. Now, they say that they must have money, and here is an expression that is new to me on the part of Mr. White. They do not want to issue bonds. They want the dear people to take up these bonds. He says that they are going to "peopleize" their bonds. That is a new word. I suppose that it is authorized by the dictionary. They are going to peopleize. Just what he means by that I do not know. I presume that they are going to try the scheme that was tried by the railroad people, and I am sure that you remember that when the railroad people wanted to make a killing in railroad stock they distributed the railroad stock broadly and then they immediately beat the stock down and they bought it back.

I do not want to be suspicious, but one can not help recalling the record of Armour & Co., and I think that holding company should be investigated also. But, certainly, the merger should be investigated, and we hope the Senate will also pass the LaFollette bill. If that be not passed, even though the LaFollette bill restoring the powers of the Federal Trade Commission be passed, we would not get the facts on this merger.

I thank you very much, Mr. Chairman, and would like to ask permission, to insert in the record a statement by Mrs. E. P. Costigan on this merger.

The CHAIRMAN. All right; give it to the reporter.

Mr. MARSH. I do not have it here, but will incorporate it later.

(Mrs. Costigan's article reads:)

### THE PACKERS AND THE PUBLIC.

[By Mrs. MABEL CORY COSTIGAN.]

The packer control law has been in operation more than 16 months. We may now ask what it has accomplished. The only answer so far published is in two reports issued by the Secretary of Agriculture, his annual report of November 15, 1922, and a report made to him by the packers and stockyards administration. The Secretary states that 78 stockyards have been made subject to his jurisdiction; that 1,075 market agencies and 3,436 dealers at these markets are registered as required under the law; that resident market supervisors have been assigned to 19 of the stockyard markets; and that general rules and regulations governing stockyards and market agencies and dealers have been adopted.

Eight formal complaints have been issued. With one exception all of these complaints have been against stockyard companies and market agencies. One complaint involved Armour's methods of buying live stock at its private stockyards at Kansas City. The most important complaint apparently was the one which resulted in stopping a boycott on the part of old-line commission companies against farmers' cooperative commission agencies at the St. Louis stockyards. The other six formal proceedings involved stockyard and market agencies where certain rates and charges were considered too high.



Both the Secretary and the chief of the packer and stockyard division report that those subject to the jurisdiction of the Secretary have shown a disposition to cooperate in the enforcement of the act and that many practices have been corrected without formal proceedings. One such practice involving one of the packers is mentioned—selling butter in 15-ounce cartons and thereby misleading the consumer into believing he was buying a full pound. Another informal conference involved live stock commission men who were induced to correct such practices as filling their own orders out of consignments to themselves.

The League of Women Voters, from the consumer's point of view, welcomes the inauguration, either through formal or informal action, of practices which assure producers a fair market. However, consumers are measurably disappointed to find virtually no mention of efforts to remedy the conditions which resulted in the enactment of the packer control law.

It is reported that the packer control act has resulted in an increase in the number of independent packers, and in the volume of their business; also, that the business of the independents in the main is more efficiently operated than that of the big packers. On the other hand, facts brought before Congress indicate that in the past 20 years the big packers have absorbed about 75 of their competitors, thereby reducing competition and promoting the tendency to monopoly.

Judging from past history, far-reaching mergers not infrequently result in less efficiency and economy, yet the public has recently been informed that Armour & Co. have submitted to the Secretary of Agriculture plans for the acquisition by Armour & Co. of the physical assets of Morris & Co. This deal would involve approximately $30,000,000 and would reduce from five to four the number of the big packing companies which already largely control the food supply of the Nation. The Secretary has been advised by the Attorney General that the packer and stockyards act does not require the Secretary of Agriculture to advise the packing industry about such transactions in advance of their consummation. It is therefore expected that the consolidation will go through as planned. One reason assigned for the merger is that it will make for greater efficiency and economy. The Federal Trade Commission, however, in its report on the meat-packing industry, challenged the efficiency of the packers and supported its contention by undisputed figures. It published data showing that the independent packers were making a higher rate of return on their investment without charging the public more than the five leading packers for service for each dollar of sales.

Before the passage of the packer and stockyards act it would have been the duty of the Federal Trade Commission to investigate the proposed merger, but, by the terms of that act, the Federal Trade Commission was unnecessarily removed from further jurisdiction over the packers except when requested by the Secretary of Agriculture to investigate and report. It is possible, therefore, that, in the absence of an amendment to that act, any attempt by either House of Congress to obtain a report from the Federal Trade Commission on packer activities will ultimately be held unauthorized. It is unfortunate that the one organization of the Government which has thorough knowledge of the packing business through its prior investigations, which is fully equipped with competent experts and attorneys, and whose official responsibility requires it to see that business is conducted fairly and in the public interest, should at this time be debarred from appropriate activity.

Senator La Follette has introduced a bill (S. 4110) to restore to the Federal Trade Commission its former jurisdiction over the packers by amending the packers and stockyards act. A resolution (S. Res. 389) has also been introduced in Congress by Senator Norris, directing the Federal Trade Commission to investigate the proposed merger of Armour & Co. and Morris & Co., to report to the Senate whether the combination of those corporations is in violation of law, and to determine to what extent such a merger will tend to eliminate competition in the purchase of live stock, and to increase the consumers' cost of living.

A serious question illustrated by the proposed packer merger and presented to the public by pending legislative measures, is whether we should strive to keep alive the old competitive system or should permit that system to give way to the control of production and distribution by trusts, more or less regulated by the Government. It is to be remembered that monopoly stifles individual initiative, modifies the accepted theories of supply and demand, dictates prices, and is always directed toward private profit.

There have been numerous attempts under the Sherman antitrust law to dissolve monopolistic combinations which restrain trade, also to regulate such combinations, but under both experiments trusts flourish and in various ways competition continues to disappear. An American economist redently said, "Monopoly now prefers regulation. It is a guaranty against competition and Government ownership."

Some foreign countries have established the practice of limiting the profiteering of business combinations by entering into active competition with them until normal conditions are restored. One Premier of Queensland, Australia, has said, "It is the policy of the Government to encourage private enterprise, but when private effort takes the form of monopoly the Government steps in."

In this country repeated business mergers and their growing domination over the Nation's supplies and distribution are causing the question to be insistently asked, What is to be the final policy of the American public in this important field which so vitally affects living costs?

## STATEMENT OF MR. CHARLES A. LYMAN, SECRETARY, NATIONAL BOARD OF FARM ORGANIZATIONS, 1731 I STREET NW., WASHINGTON, D. C.

Mr. LYMAN. Mr. Chairman, under authorization and instruction from Mr. Charles S. Barrett, chairman of the National Board of Farm Organizations, and president of the National Farmers' Union, I have come up here briefly to state that we favor the Norris resolution 386, and also that we favor the amendment introduced by Senator La Follette, the effect of which I presume, would be to give or to restore to the Federal Trade Commission concurrent jurisdiction over the meat packing industry.

I am sorry that there are no more members of the committee here, and especially that Senator Kendrick is not here, because I want to refer to what I understand was the attitude recently taken by the American National Livestock Association at its annual meeting. Knowing of Senator Kendrick's long-time association with that organization, I know that he could give the committee much more accurate information of what recently transpired.

I was not here when Mr. Marsh began his statement, and it may be that he has gone into the matter. It is simply my understanding of what took place, and I would like the privilege of introducing such parts as are germane from the resolution, as soon as I can obtain it; but I understad that the great American National Livestock Association, at its annual meeting at Los Angeles, went on record against this proposed merger, or against, rather, this consumated merger of Armour and Morris, and that, to my mind, is a very significant fact.

There are a great many very large cattle producers in that association. Many ot them are so-called cattle barons. Many of them, in the past have been closely associated with the large packers, or at least have had a certain identity of interest with these large packers, by reason of their liabilities, through loans, which they had to make with the cattle loan companies out through the West, many of which, it is common knowledge, were quite largely controlled by some of these big packers.

Of course, there are smaller cattle producers in that association, but on the whole it has been pretty largely officered and dominated by these large cattle growers, and knowing how much pressure has been brought to bear in the past upon officers and members in that organization, it is very significant to me that at this time this association, as I understand it, has come out against this merger, and I think it would be of great interest to the committee to get a copy of the resolution adopted by that meeting.

I am also informed, Mr. Chairman, that this same great live-stock association also wants the Federal Trade Commission to investigate and, if possible, to prevent this merger. Of course, that brings up the question of the principles involved in the live-stock yards and packer act, and I invite your attention to the fact that the effort of all great self-help farm organizations, when that legislation was pending, was in favor of the retention of the power of the Federal Trade Commission to investigate under certain circumstances, the meat packing industry. The National Board of Farm Organizations was strongly in favor of the retention of that power by the Federal Trade Commission.

Mr. Marsh has referred to the remarks which he made before the Committee on Agriculture in the House, and I think that, in the main, is the position which was taken by myself and others, who represent our body. We pointed out at that time that under the Federal Trade Commission act, either branch of Congress, regardless of the position taken by the other branch of Congress, could get up some fine morning and put forth and pass a resolution asking the Federal Trade Commission to make an investigation. We pointed out that it did not require both Houses to do this; did not require the President to sign a bill passed by both Houses; we pointed out that the Attorney General, under the old act could also order an investigation upon his own initiative, or that the President could do it upon his own initiative, but our arguments were unavailing. A great many members of the committee were impressed by the fact that certain spokesmen for certain blocs of farmer opinion did favor the bill as substantially enacted into law.



It developed that the bill as enacted was in the main the bill which the attorneys for the packers had agreed was about what they would be willing to submit to, provided there had to be any legislation at all. It developed that one of the able attorneys for one of the large packers thought it advisable to make the rounds of certain agricultural organizations and to suggest that there were certain amendments which ought to be adopted to make the law a practical and workable thing; and it was also developed that this attorney handed one of the representatives of one of the large farm organizations a copy of what we at that time called the original Haugen bill. Into this bill he had written a number of interlineations in the shape of amendments. Upon examination of this document, or, rather, upon comparison of this document with the bill introduced by Congressman Williams of Illinois, it developed that the bills were practically the same, word for word, throughout the entire course of the bill. I think that there was one omission; but it appeared upon examination that the section which took away the concurrent jurisdiction of the Federal Trade Commission was in the handwriting of this packer's attorney or his assistant, and that it was also in the Williams bill; and this, as far as I know, was the first time that this idea that the Federal Trade Commission could not make concurrent investigations was ever introduced in written form and publicly put forth before the men in Congress.

Now, we pointed all those things out. We said we did not ask that the Federal Trade Commission should be continually mixing into things of its own initiative; I think we qualified that by saying, unless there was great provocation and danger that the public interest was suffering; but we said we did want Congress to retain the power in itself to order the Federal Trade Commission to make an investigation if it was necessary that it should be done.

We pointed out that the only way Congress could get back this authority was through a new law, that this would require passage of a bill by both houses, which in turn would have to run the gamut of presidential favor or disfavor.

Well, a good many of the able lawyers on the Agricultural Committee of the House could not see it that way. They thought we were mistaken, but the attorneys for the packers who have drawn up the brief already mentioned don't think any mistake was made, because in this brief, on page 58, which is contained in this letter from the Secretary of Agriculture, they state:

"The jurisdiction of the Federal Trade Commission to prevent unfair methods of competition so far as a packer is concerned has been transferred to the Secretary of Agriculture by the packers and stockyards act, 1921."

Mr. Chairman, that is what we thought was meant by that provision in that Williams bill, which was passed in substance.

I am simply going into this rather "sad and sordid" recital to show you that the National Board of Farm Organizations did make a very strong stand against removing the powers of the Federal Trade Commission. Therefore, it would seem that we are justified now in coming here and urging support for the La Follette amendment or for an amendment which will in substance restore the power of the Federal Trade Commission to what it was prior to the passage of this packer and stockyards act.

The CHAIRMAN. Mr. Lyman, as you have been giving the history of the act, I want to give the history of it as it came up in the Senate. When we had a roll call vote on the substitution of the House bill for the Senate bill—the Senate bill came from this committee and as chairman of the committee I introduced it, and it retained the jurisdiction of the Federal Trade Commission—there were some other differences between it and the House bill, but I quote that as the most important difference of all. But we were defeated on roll call by, I think, three votes, and thereby the House bill was enacted, and as that attorney truthfully said, took away from the Federal Trade Commission all the jurisdiction to investigate the packers, unless the Secretary of Agriculture, to whom was given, in the bill, the supervision of the packers, unless that Secretary requested the Federal Trade Commission to make an investigation. Of course, that provision really amounts to nothing. Everybody knew it did not amount to anything because if the Secretary did not want an investigation he would, of course, not ask somebody else to make it. It did not mean anything.

Mr. LYMAN. Yes, Mr. Chairman.

The CHAIRMAN. And the Senate and the House, the President and the Attorney General also lost the right, under the law, to ask the Federal Trade Commission to make an investigation of anybody engeged in the packing business.

Mr. LYMAN. I intended, Mr. Chairman, to mention that, and that the law does give the Secretary of Agriculture the right to call——

The CHAIRMAN (interposing). You do not think that there is any meat in that provision, do you?

Mr. LYMAN. Well, here is the position I took at that time and I still retain it: I felt that the hands of the Secretary of Agriculture would be immeasurably strengthened if the Federal Trade Commission had concurrent jurisdiction, because, after all, any Secretary of Agriculture is more or less in a political atmosphere.

The CHAIRMAN. Yes.

Mr. LYMAN. He is a political appointee in the first place. I am not directing my remarks to any particular Secretary of Agriculture.

The CHAIRMAN. No. I am not thinking of any man, but the mere fact that he is a political appointee might stand in the way of his making a thorough investigation of the packers, if the politics of the situation did not want it made, and if they did not want the packers investigated they certainly would not ask the Federal Trade Commission to make an investigation.

Mr. LYMAN. That is right. I think we must all agree on this, that whenever any great question comes up, which has political dynamite in it, that the question is considered not only by the Secretary of Agriculture but by his associates in the Cabinet, and there are many things that enter into a discussion of that sort, and there are many powerful influences which do or which might make it hard for any Secretary of Agriculture to do as he would like to do. I have always felt this way. I am sure I have discussed it with the present Secretary of Agriculture, and I have said to him that it seemed to me that his position would be very much strengthened if he could say that he wanted to make an investigation of the packing industry and wanted the Federal Trade Commission to make it, and if he could say, "Unless I am permitted to make it, why, the House or the Senate is likely to get up on its hind legs to-morrow morning or next week and have it done anyway."

Now, I think that would be a powerful club in the hands of the present Secretary of Agriculture. Now, his record, of course, during the food administration days, in many respects, and I do not know but in most respects, was magnificent. It would be of interest to this committee to look back into the editorial pages of Wallace's Farmer during the Food Administration days of 1917 and 1918, or along about that time, and see what a gallant fight Mr. Henry C. Wallace was waging in behalf of the farmers—the hog raisers, for instance. Those question came up in the Food Administration, and he thought that good faith had not been observed and he so set forth his ideas in his editorials.

I am referring to his record as you see it in the farm journal, Wallace's Farmer. Now, can I say that his attitude has changed? I can not say that his attitude is changed. I can say that he has come down here into an entirely different situation, into a political position, where most powerful influences are brought to bear upon him, where powerful arguments are made by his associates, where great financial institutions might presumably say, "Now, we know that the whole industrial fabric is shaky, and we must not do anything that will create greater disturbance. We must go very cautiously until we get into better and more settled times," and I suppose he might say, "Well, I have had a new vision," or, "I have gotten more data," or, "I think perhaps now I am a little better balanced." He might say something like that at the present time.

The Federal Trade Commission, on the other hand, is a rather unique institution in this country. These commissioners have a long tenure of office. They have been of a particularly fine type of men who hold the public interest foremost, whose duties are quasi judicial, and they are not in politics at all, in the sense that certain other departments are.

Therefore, it seems to me that it would be far better to restore concurrent jurisdiction or, perhaps you might call it potential jurisdiction; that is, a jurisdiction subject to call.

A small group of us called upon the Secretary of Agriculture not very long ago and he gave me to understand that he would not object at all to the restoration of the powers of the Federal Trade Commission over the meat-packing industry. He said, as I recall it, in substance that it was rather a trial and an annoyance, and a very great responsibility to have this investigational power lodged in him. I do not recall just what his suggestion was. I think it was that if the power was going to be restored to the Federal Trade Commission, that it ought to be taken away from him, so that he would be relieved of that particular kind of responsibility.

One further point: This statement came to my knowledge and observation, that some of the packers out in Chicago were not fully cooperating with the Secretary of Agriculture; that they had refused the Secretary's agents or employees access to their books, or to some of their books. I asked the Secretary of Agriculture if that were true, in the presence of several gentlemen who are here to-day, and his answer was, in substance, that everything would come along all right; that he had plenty of power to enforce such observance of the law, viz, getting the packers to turn over their books for examination, but that in his judgment, having that great power, having a great big club which he could use, it was a time nevertheless, to speak softly. I told him of the interest of the farm organizations in this whole matter. I said, "You know we will always be ready to fight to the last ditch to back you up in matters of that sort," and that was about the end of the matter. I think there was a feeling, and that there is a feeling now in his mind, that discussion is not best. I am sorry that he feels that way, because to my mind it is better to have these things understood and thrashed out in the open.



Just one other thing that I want to say, very briefly, and that is that I think the final solution is not in these great proprietary interests. Some day the farmers of this country are going to learn how to organize little or comparatively small cooperative packing plants, like the Danish farmers have done, and some of the Irish farmers. There is one thing that can come out of such a movement fully realized, and that is that the farmers who own these plants can do a standardization which is absolutely impossible in the case of these great packing plants, because the farmers can agree, and will agree, to raise a certain type of hog, feed it in a certain way, and market it at an approximately uniform weight.

Now, I am giving you the circumstances as to how they do this in Denmark. An association in a county, we will say, by its articles of agreement will bind themselves to raise a certain type of hog, and to feed it in approximately a certain way, and to market it at between a maximum and a minimum weight. We get standardization in that way. One of the Cudahys coming back from Europe a few years ago on board a ship on which the late Dr. Charles McCarthy, of Madison, Wis., was sailing, talked this whole matter over with Doctor McCarthy. Doctor McCarthy, who was an international authority on agricultural cooperation, had been all through Denmark and was very enthusiastic on what he saw there in connection with these cooperative packing plants, and so stated. Mr. Cudahy, in substance, then said, "Why, if the farmers of the United States ever do this thing that you are describing, the big packers will have to go out of business, because we can not standardize in that way. We have to take everything, good and bad, rough and wooly, that comes along. The only way we standardize, is as we handle our product, and we standardize through our marketing. We find certain kinds of buyers in the south, or elsewhere, that will take rough meat, and then we have other customers, other markets, that take the best meats." But, Mr. Chairman, there is a waste in that way which we do not find in the Danish cooperative packing plants which, as you know, supply the British breakfast table with the choicest pork products.

The little, or comparatively small, farmer-owned and cooperatively operated plant can not compete, of course, individually with concerns like Swift, Armour, Morris, etc., but through federation, through State-wide association, they can have standardization, they can have uniform auditing and bookkeeping, they can have advertising together and they can employ competent legal talent. And that is the thing we are eventually coming to, Mr. Chairman. It may not be germane to this discussion, but I simply wanted to bring it to the attention of this committee.

I have one more thought in this connection, and that is that the present method is not adequately serving either the producer or the consumer.

The CHAIRMAN. Mr. Lyman, before you leave the stand; I am very much interested in your detail of the history of the legislation a couple of years ago when they passed our meat packing control act. As I have said before, it was a contest between the House bill that eliminated the Federal Trade Commission and the Senate bill that retained the Federal Trade Commission, and we who favored the Senate bill were beaten by a very small margin. You remember there were several organizations of farmers that were in favor of retaining the Federal Trade Commission's jurisdiction, and therefore in favor of the Senate bill, but there was one big farmer organization that favored the House bill, and had something to do with the bill itself, etc.

Mr. LYMAN. Yes, sir: that is true.

The CHAIRMAN. Well, now, what is the name of the farmer organization?

Mr. LYMAN. Well, the hearings show that the Williams bill which proved to be almost exactly the same as the Haugen bill with the packer lawyers' interlineations was handed to Representative Williams by the American Farm Bureau Federation.

The CHAIRMAN. Who was that representative?

Mr. LYMAN. I think I am correct that Mr. Silver said he gave it to Mr. Williams, and that Mr. Williams said in his testimony that he received it from him. I am not positive, but, of course, it is all a matter of record.

The CHAIRMAN. Mr. Silver still represents the American Farm Bureau Federation, but has not appeared on this hearing, and that organization does not appear to be represented here. Mr. Silver does not appear to be giving this any attention, because he is too busy representing or looking after Mr. Ford, but I want to remark that this organization, while I think they are wrong and never hesitated to say so, and that Mr. Silver is wrong, I concede that they had a perfect right to be in favor of the House bill, and I am not complaining on that account, but if we are going to give the history we ought to give it complete.

Mr. LYMAN. Mr. Chairman, I do not want to be unfair to anybody, and I would like to say this, that I haven't the slightest idea that that bill of Mr. Williams was drafted by Mr. Silver. I haven't the slightest idea of that, because——

The CHAIRMAN. I don't think anybody ever thought he drafted it.

Mr. LYMAN. Because in Mr. Silver's testimony I think you will find he said, and I understand he said, that the Farm Bureau Federation had taken over a committee of live-stock people and that the bill was the result of their best effort and thought. And, of course, where Mr. Silver showed the greatest handicap from my standpoint, was this: It is shown in his own statement that he said that this committee, which had been taken over by the Farm Bureau Federation for the purpose of drafting this bill was composed of certain producers, some of whom were for and some of whom were against packer-control legislation. You will find that in the statement which Mr. Silver made before the committee. Now, of course, when you take over a group of advisers for the purpose of doing something, and you are handicapped in that way—that is, have men on the committee who are propacker, in spite of the evidence in the case—why, of course, you are seriously handicapped.

Now, it is the average farmer that I am particularly interested in, and not so much for the exceptional farmer, the breeder of pure-bred live stock, or the early homesteader who bought his land for a few cents or a few dollars an acre and developed into a very rich man. Such is not the type of farmer that I am thinking of, or worrying about particularly, for such farmers are usually pretty well able to take care of themselves. It is the average farmer in this country, his circumstances, his welfare, that we should be concerned with, because they are the farmers, the kind of farmers who need help and, therefore, early learn to cooperate, to form cooperative associations, and to bargain together in a cooperative manner. It is the average farmer to my mind who is the most stabilizing influence in the Nation to-day.

The CHAIRMAN. All right. Now, is there anyone else to be heard?

Mr. MARSH. In answer to the chairman's questions, I think I can throw a little light on that, but I do not want to make the record unnecessarily long.

The CHAIRMAN. Of course, I do not want to limit you, Mr. Marsh.

Mr. MARSH. My recollection is quite clear, Mr. Chairman, with reference to this bill which was introduced by Mr. Williams at the request of the American Farm Bureau Federation, not as to the details of the bill, but as to the incident. I saw the bill and analyzed it for, I should say, three-quarters of an hour to an hour, before the Committee on Agriculture of the House. It was my impression, always, that the packers had drafted that bill. It was handed to Mr. Williams by a representative of the American Farm Bureau Federation.

The CHAIRMAN. Who?

Mr. MARSH. I have my testimony, Mr. Chairman, in which I exposed the bill, and I will tell you some of the features in a moment. Mr. Gray Silver was concerned with it, and I will leave it to the record as to whether Mr. Silver definitely admitted that he had handed the bill to Mr. Williams, but I am quite sure he did not deny it. He was given that opportunity, because after he saw what it was he was given an opportunity to deny it, and to discuss the bill before it was adopted.

I think perhaps the reason he is not here now is because he is so interested in the Ford Muscle Shoals gold brick which Mr. Silver is now selling to the members of his organization who pay $10 per year. That bill provided that no packer should be prosecuted for a violation of the act until he had been convicted of the second offense. Now, I am not a lawyer, and I am not getting $12.000 a year as a representative of my organization, but it did seem to me that that was a little unusual that they were to be given an immunity bath in legislation, for violation of the law, and there are several other provisions similar to that in the bill which I heartlessly exposed.

The CHAIRMAN. Well, it took away the jurisdiction of the Federal Trade Commission, also?

Mr. MARSH. I am quite sure that you will find that this is in the hearings, and the point I asked about was whether the packers lawyer had helped to draft it, and if some of the lawyers present were not responsible for it. Finally, in my efforts to get at an understanding of a section of the bill, I asked General Lightfoot, who was counsel for Wilson, and he was able to explain that provision, which, as I said, made it clear. He had, of course, studied the thing and by that I think admitted that he had participated in drafting it. It has for its purpose the exploiting of the farmer and that, of course, was shown and I took advantage of that occasion to say so, but that bill was killed in committee.



The CHAIRMAN. Yes; but the provisions in the bill, like eliminating the Federal Trade Commission, were incorporated in the bill and they became law.

Mr. MARSH. Yes.

The CHAIRMAN. In the House bill.

Mr. MARSH. Yes; but here is the point, and no farm organization, purporting to represent the farmers and knowing at the same time that the farmers were in favor of retaining the Federal Trade Commission, could afford to be speaking for any such bill, as the Williams packer bill prepared by the American Farm Bureau Federation.

I do not like to make these statements, but occasionally a truthful statement as to history does help to clear up things like the Muscle Shoals.

(Whereupon, at 12.15 o'clock p. m., the committee adjourned.)

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Hearing on Bx 137
Agriculture & Forestry
U.S. Senate

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